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**Robbery.**—In a robbery prosecution, evidence to convict held not sufficient.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 954.]

**3. Robbery (§ 1\*)—Defined "Taking."**—Robbery is the "taking," with the intent to deprive the owner permanently, of personal property, from his person or in his presence, against his will, by violence or intimidation, and the taking must be the securing dominion or absolute control of the property, though the absolute dominion be only momentary.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 952.]

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Robbery; Taking (In Larceny).]

Error to Circuit Court, Chesterfield County.

One Green was convicted of robbery, and he brings error. Reversed and remanded for new trial.

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GIBSON et al. *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 563.]

**1. Criminal Law (§ 1129 (3)\*)—General Assignment Court Erred in Instructions Is Insufficient.**—On writ of error to review a conviction, an assignment that the court erred in its instructions to the jury, as would be pointed out in the brief, but without any brief or oral argument to point out the error, was clearly insufficient, under Code 1919, § 6346, and Supreme Court Appeals rule 2 (94 S. E. vi).

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 546.]

**2. Criminal Law (§ 1172 (8)\*)—Error in Instructions Held Harmless, Where Guilt Was Clear and Minimum Sentence Was Given.**—Where no verdict except that of guilty could properly have been found under the evidence, and the minimum sentence was imposed, any error in the instructions would be harmless.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 532.]

Error to Corporation Court of Charlottesville.

W. H. Gibson and others were convicted of transporting ardent spirits contrary to law, and they bring error. Affirmed.

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JUNIPER LUMBER CO. *v.* JOHN M. NELSON, JR., Inc.

June 15, 1922.

[112 S. E. 564.]

**1. Contracts (§ 274\*)—Upon Cancellation by Mutual Agreement Right to Sue for Previous Breaches Held Not Reserved.**—Where plaintiff agreed to the cancellation of a contract between it and defendant without expressing any intent to reserve the right to sue for previ-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ous breaches, and, upon compliance by defendant with the cancellation agreement, its attorney wrote defendant, relasing it from "further performance" and stating that the contract was "canceled as of this date," and, though plaintiff knew defendant regarded the cancellation as absolute and unconditional, it did not indicate that it placed any different construction thereon for four months, there was no reservation of the right to sue for past breaches.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. p. 417.]

**2. Contracts (§ 274\*)—Right to Sue for Previous Breaches after Cancellation by Agreement Must Be Expressly Reserved.**—When an executory agreement partly performed is mutually canceled, if any right is reserved to recover unliquidated damages arising out of previous breaches, it should be reserved expressly, and the burden is on the one alleging such reservation to show that this was the mutual understanding.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 417.]

Error to Circuit Court of City of Norfolk.

Action by John M. Nelson, Jr., against the Juniper Lumber Company. Judgment for plaintiff, and defendant brings error. Reversed, and judgment entered for defendant.

*G. M. Dillard*, of Norfolk, for plaintiff in error.

*Hugh C. Davis* and *Hugh W. Davis*, both of Norfolk, for defendant in error.